

# **Marijuana Cultivation Operations on Federal Lands**

Water Quality Coordinating Committee Meeting  
Sacramento, California  
Oct. 23-24, 2018



# Legal Update

- *United States v. Gilmore*, 886 F.3d 1288 (9th Cir. April 5, 2018):
  - “The restrictions imposed by § 538 [the marijuana appropriations rider] do not apply to marijuana cultivation on federal land.”



## Case Study

- *United States v. Cortez-Villasenor*, 623 Fed. Appx. 392 (9th Cir. 2015):
- Lunch man
- Greenhorn Creek, Sequoia NF





- 8,876 mj plants
- 5 charged



- One removed by Medevac
- Cortez's juvenile son  
sickened and left before sw
- Empty containers of "Fosfuro  
de Zinc" (zinc phosphide)
- 10 pounds of Fosfuro de Zinc at Cortez's residence







# Zinc Phosphide

- Rodenticide
- Restricted use – may only be purchased and used by certified applicator
- Toxicity Category 4 (the highest of 4 categories)
- Generates phosphine gas when exposed to liquid



# Charges Filed

- Drug Conspiracy
- Manufacture of MJ
- Possession with Intent to Distribute MJ
- Employment of Minors in Drug Operation (21 U.S.C. § 861)
- Depredation of Government Property (18 U.S.C. § 1361)
- Unlawful Distribution of Unregistered Pesticide (7 U.S.C. § 136j(a)(1)(A), in violation of Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA))





# Environmental Charges

- **Depredation of Government Property (18 U.S.C. § 1361)**
  - **Penalties:** 10 y/\$250,000 fine/restitution
  - Willfully injuring or committing depredation of any government property
  - Not necessary to show defendant knew property was government property
  - Damage in excess of \$1,000
- **Depredation Conduct:**
  - **Fisheries/Aquatic Resources:** increased soil erosion, contamination, diversion
  - **Soils:** compaction and erosion
  - **Wildlife:** poaching, poisoning, increased mortality of threatened species
  - **Invasive Plants/Weeds:** resulting from removal of native vegetation
  - **Deforestation:** loss of under and overstory, merchantable trees
  - **Cultural Resources**
  - **Rare plants**



# Environmental Charges

- **Unlawful Distribution of Unregistered Pesticide (7 U.S.C. § 136j(a)(1)(A), in violation of FIFRA)**
  - **Penalties:** 1 y/\$150,000 fine
  - Requires proof of distribution
  - Any person who knowingly receives, holds/stores and delivers unregistered pesticides to a grow site is sufficient evidence of distribution
  - Application of pesticide is not distribution
- **EPA Registrations**
  - National Pesticide Information Center (NPIC) Product Research Online:
    - <http://npic.orst.edu/NPRO/>



# Dispo

- All pled G to drug conspiracy
- Cortez also pleaded G to FIFRA violation
- USSG sentence with safety valve: 46-57 mos.
- USSG sentence without safety valve: 10 years
- Cortez not truthful at safety valve interview



# Dispo

- Cortez sentenced to 10 years
- Restitution (joint and several) to USFS ordered
  - Inmate Financial Responsibility Program (IFRP) allows for periodic restitution payments
- 9<sup>th</sup> affirmed: court must accept government's view of truthfulness



## Resource Damage Assessment Report

Wildcat Marijuana Grow Site  
Wallowa Valley Ranger District – Wallowa-Whitman National Forest  
July 13, 2011



### Synopsis:

A substantial marijuana grow operation located in NE Oregon within the Wallowa-Whitman NF was raided by officials on June 15, 2011. The operation included 19 garden plantations (also referred to a "pods"), 6 cisterns, 2 camps, and 4 garbage pits. Due to the size and scope of the operation, a team was convened to conduct a thorough assessment of potential resource impacts or damage. US Forest Service specialists representing soils, aquatics, wildlife, timber, botany, weeds and safety/HAZMAT completed a field review and evaluation of the Wildcat Creek marijuana grow operation to determine resource impacts and associated costs for rehabilitation and restoration. The following table summarizes rehabilitation/restoration and clean-up costs.

	Soils	Wildlife	Invasive Plants	Timber	HAZMAT	General Clean-up
Assessment Costs	1000	800	1200	1200		
Rehabilitation/Restoration/Clean-up Costs	3000	7000	1937	425		46,800
HAZMAT/Assessment/Abatement					\$34,112	
Total Costs by resource	\$4000	\$7800	\$3137	\$1625	\$34,112	\$46,800

Total Rehabilitation/Restoration and Clean-Up Costs = **\$97,474**

1 Wildcat Marijuana Grow Site Resource Damage Assessment

## Valuation

Forest Soil and Water Program  
Manager

Wildlife Biologist

Forest Botanist

Timber Staff

Archeologist

Fisheries Biologist

Forest Safety Officer



Karen A. Escobar, AUSA  
U.S. Attorney's Office, E.D. Calif., Fresno Office



# Carbofuran



# Carbofuran





# Carbofuran





# Carbofuran





# Carbofuran in Sierra National Forest







Integral Ecology Research Center

|SKE

60°F 15°C ●

05-15-2018

13:22:44



# Other Federal Environmental Crimes

## **POLLUTION CRIMES:**

- Clean Water Act (CWA), 33 U.S.C. 1319(c)
  - Knowingly discharging pollutant into waters of U.S. without a permit
- Resource Conservation and Recovery Act (RCRA), 42 U.S.C. 6928(d)-(f)
  - Knowingly, treating, storing, transporting, disposing of a hazardous waste without a permit
- Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. 9603(b)
  - Releasing hazardous substance into environment and failing to report



# Other Federal Environmental Crimes

## WILDLIFE/NATURAL RESOURCE CRIMES:

- Endangered Species Act, 16 U.S.C. §§ 1538, 1540
  - Strict liability misdemeanor – unlawful take – could be used with damned streams where protected fish killed downstream
- Migratory Bird Treaty Act, 16 U.S.C. §§ 704, 707
  - Strict liability misdemeanor – unlawful take of migratory bird
- Unlawful cutting or injuring of trees on public land, 18 U.S.C. § 1853
- Willfully setting on fire timber, underbrush, grass on public land, 18 U.S.C. § 1855
- Archaeological Resource Protection Act (ARPA) violation, 16 U.S.C. § 740ee
  - Unlawful take of material remains of past human life or activities which are of archaeological interest



# Questions?

Karen Escobar

D: (559) 497-4094

C: (559) 274-8993

[karen.escobar@usdoj.gov](mailto:karen.escobar@usdoj.gov)

